APPENDIX A.

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

EASTERN DIVISION.

In Equity, No. 3746.

Illinois Bell Telephone Company, Plaintiff,

vs.

Benjamin F. Lindheimer, Ernest J. Kruetgen, Andrew Olson, G. Gale Gilbert, Phil W. Collins, Paul Samuell, Charles E. Byrne, the Persons Constituting the Illinois Commerce Commission of the State of Illinois, Defendants,

and

City of Chicago, a Municipal Corporation, Intervenor.

Under the decree entered in this suit pursuant to the mandate of the Supreme Court the amount of compensation which should be allowed to the attorneys, Benjamin F. Goldstein, George I. Haight, and Edmund D. Adcock, who conducted the litigation for the City of Chicago and the telephone customers was left undetermined. We are required to fix that compensation now in order that plaintiff may know what to deduct from each subscriber's refund.

Counsel, who are seeking the allowance of fees, call our attention to certain facts which they assert should be given favorable consideration by us. They point to the extended period of the litigation, to the services that they may still be required to perform to see that each subscriber receives the full amount of his refund, to the im-

portance of the litigation, to the great amount of work which they rendered, to the voluminous record showing in part the extent of such labors, to the fact that they were to receive no compensation if they did not prevail in the litigation, and to the complete and overwhelming victory which marked their efforts. They also call our attention to the amount of interest recovered for the subscribers and to the fact that while the services covered some seven years the compensation is all due in a short period, and therefore the income taxes levied on their fees will be disproportionately large.

We are not prepared to accept the last mentioned fact as material to the question before us, although it may reduce the amount of counsel's net compensation very materially.

In view of the fact that counsel's compensation was dependent upon a favorable outcome of the litigation in the Supreme Court, and in view of the fact that it will be much simpler and easier to fix the amount which must be deducted from each customer's refund if the compensation be determined on a percentage of the recovery basis, we have concluded to adopt such method.

In determining what is a fair percentage to be allowed counsel for a successful litigant where the services were rendered on a contingent basis, the percentage however not being fixed, we think it necessary to consider the extent, the character, and the quality of the legal services rendered, the amount involved, the percentage which the recovery bears to the total amount claimed, and perhaps other facts such as the custom or practice prevailing among members of the Bar when they engage in services, the compensation for which is necessarily dependent upon a no pay without victory basis.

Our attention is particularly called to the fact that not only was the recovery the full amount sought, but interest was allowed, a sum more than 25% of the total amount which the customers overpaid the Telephone Company.

Under all the circumstances we have reached the conclusion and do find that seven and one-half (7 1/2) percent, of the amount which the Telephone Company has been ordered to repay to its customers is the fair sum which the counsel should receive as compensation for their services. The Telephone Company is authorized and directed to deduct from the customer's refund seven and one-half (7 1/2) percent. of the amount of refund due the customer. At the end of the three year period from June 1, 1934, if there be any distribution not made, the Telephone Company shall pay counsel the same percentage of all available refunds then undistributed; thereupon further obligation of the Telephone Company in respect thereto shall cease and determine.

In order that the City of Chicago may be promptly reimbursed for the advances made to counsel in the sum of Two Hundred and Ten Thousand Dollars ($210,000), plaintiff is directed to make its first payment to the said City of Chicago in the sum of $210,000 which sum is to be charged against the amount payable to counsel as herein determined. Said advance of fees so to be made shall constitute a part of the deduction of said refunds as hereinbefore provided. The Telephone Company, in order to insure said prompt payment to the City of Chicago, is directed to pay on or before August 31, 1934, to the City of Chicago the sum of Two Hundred and Ten Thousand Dollars ($210,000), and also to pay on account to said attorneys forthwith the sum of Fifty Thousand Dollars ($50,000) for expenses and disbursements by them paid.

Dated: July 23, 1934.

EVAN E. EVANS
WILLIAM M. SPARKS
Circuit Judges.

JAMES H. WILKERSON,
District Judge.

United States Of America Northern District of Illinois ss:

I, Henry W. Freeman, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Memoranda Opinion of Hon. Evan A. Evans, Hon. William M. Sparks, and Hon. James H. Wilkerson filed July 23, 1934, *in the Matter of Illinois Bell Telephone Company vs. Benjamin F. Lindheimer et al* in Equity #3746, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 1st day of June, A. D. 1938.

(Signed) Henry W. Freeman

(Seal) Clerk

APPENDIX B.

Missouri Statutes.

SECTION 5678 REVISED STATUTES OF MISSOURI 1929.

"LOCATION OF OFFICE—CLERKS—LEGAL ADVISER.—The said superintendent shall have his office in the City of Jefferson, and shall keep the same open for business from 8 a. m. to 5 p. m. every day except Sundays and public holidays. He shall have his office in the capitol building and be provided with suitable rooms therein and be furnished with a suitable safe, furniture, stationery, printing and such other things as may be necessary for the transaction of the business of his office. He shall also have one clerk at a salary of one thousand five hundred dollars per annum and if it become necessary for a proper dispatch of the business of the department, said superintendent may employ additional clerical help at an expense not exceeding one thousand dollars per annum, and also to employ such actuarial work to be done as may be necessary, all of which expense shall be paid as provided for by section 5679 out of the amount appropriated by law from the fees collected by the insurance department. The attorney-general shall be his legal adviser, but the superintendent may, with the approval of the governor, employ other counsel for the purpose of enforcing the insurance laws, except in criminal prosecutions. He may also employ suitable persons to make examinations as to the solvency of companies when he deems it necessary: Provided, however, that he shall not employ any person in any capacity who is an officer, agent or employe of any insurance company or association. Said office shall be deemed a public office, and the records, books and papers thereof, or on file therein,

shall be deemed public records of the state. In the management of the assets of the dissolved companies, he shall employ only such clerical and other assistance as the courts having charge of the same may, in the first instance, direct. (R. S. 1919, Sec. 6089)."

SECTION 5679 REVISED STATUTES OF MISSOURI 1929.

"EXPENSES, HOW PAID.—All the expenses of the insurance department now or hereafter incurred and unpaid, or that may be hereafter incurred, including the salaries of the superintendent and deputy superintendent, except the expenses of examinations, valuations or proceedings against any company, and for winding up, dissolving or settling the affairs of companies, which expenses are to be paid by the company, or as provided by this law, shall be paid monthly out of the amount appropriated by law from the fees collected by the insurance department, on warrants drawn upon such fund by the state auditor on vouchers approved by the superintendent; and all the fees received by the superintendent under the provisions of this chapter shall, immediately on receipt thereof, be paid into the state treasury by the superintendent, and shall be placed to the credit of the insurance department fund. The state shall not be responsible in any manner for the payment of any such expenses, or of any expenses of this department, or any charges connected therewith. (R. S. 1919, Sec. 6090)."

SECTION 5685 REVISED STATUTES OF MISSOURI 1929.

"EXPENSES, HOW AND BY WHOM PAID.—The expenses of proceedings now or hereafter had against insurance companies, and of examinations of the assets or liabilities and valuations of policies of insurance companies doing business in this state, shall be assessed by the superintendent of the insurance department upon the company

proceeded against or examined, or whose policies have been valued, and shall be in the first instance paid by such company, on the order of the superintendent, directly to the person or persons making such examination or valuation, or rendering the service. In case of such examination, or valuation or proceeding, if the company has been or shall be adjudged insolvent, or shall neglect, fail or refuse to pay said expenses, the superintendent may, in his discretion, retain from the fees collected under the next succeeding section enough to pay for the same, in whole or in part; and the amount so paid by him, together with costs, charges and fees for collecting the same, shall be a first lien upon all the assets and property of such company, and may be recovered by the superintendent in any court of competent jurisdiction, by suit; or, if said company be in liquidation, or process of being wound up, the cost and expenses of settling its affairs shall, except in cases of companies now in the hands of receivers, be allowed and taxed as costs against said company, and shall be a first lien upon and payable out of its assets. When collected by the superintendent, the amount retained by him shall be by him applied to the reimbursement of the fund of the department, and shall then be paid into the treasury, as provided in section 6090: Provided, however, that before any costs of an examination or valuation shall be paid, vouchers for the same shall be submitted to and approved by the state auditor; and provided further, that when any examination or valuation is made by the superintendent in person, the cost of making the same, excepting his traveling or other necessary personal expenses, shall be paid by him, when collected, into the department fund; and provided further, that the fees for an examination of the assets or liabilities of a company shall not exceed ten dollars per day for any one examiner, together with all necessary expenses incurred and actually paid, and reported under oath of the examiner, and that the fees

for making valuations of policies or other obligations of assurance shall not exceed ten dollars for each million dollars of insurance, or fractional part thereof, for all ordinary forms of policies; and for forms of policies requiring special construction of tables for valuation, the cost of computing such tables shall be added. (R. S. 1919, Sec. 6096)."

SECTION 5686 REVISED STATUTES OF MISSOURI 1929.

"FEES.—There shall be paid to the superintendent of the insurance department by every insurance company doing business in this state the following fees: For filing the declaration required by this chapter on the organization of each company, fifty dollars; for filing statement and certified copy of charter required of companies not organized under the laws of this state, fifty dollars; for filing annual statement of any company doing business in this state, thirty dollars; for filing supplemental annual statement of any company doing business in this state, ten dollars; for filing any other papers required to be filed in his office, ten dollars each; for filing agent's copy of his company's certificate of authority or license, two dollars; for furnishing copies of papers, records and documents filed in his office, per folio, twenty cents; for affixing seal of office, one dollar. (R. S. 1919, Sec. 6097.)"

SECTION 5688 REVISED STATUTES OF MISSOURI 1929.

"DEFICIENCIES, HOW MET.—In case the expenses of this department, including the salaries paid to the superintendent and deputy superintendent, shall exceed the amount collected under section 5686, the superintendent shall, annually, assess upon all insurance companies doing business in this state a sum equal to such excess, which he shall collect and apply in like manner as by this chapter authorized and required in respect to the fees payable by

such companies. Such assessments shall be made in proportion to the relative amounts of the assets of each company. (R. S. 1919, Sec. 6099.)"

SECTION 5874 REVISED STATUTES OF MISSOURI 1929.

"ORDER OF SUPERINTENDENT SUBJECT TO REVIEW BY COURT—FUNDS TO BE DEPOSITED IN RESPONSIBLE BANKS.—The orders and directions of the superintendent of insurance, together with his findings or determinations of facts upon which such orders or determinations are founded, shall be reviewable by a proper action in the courts, and upon such review the entire matter shall be treated and determined *de novo*, but the burden of proof as to the unreasonableness or injustice of any order made by the superintendent of insurance shall rest upon the party or company, or companies, appealing from such order. The court shall have authority to sustain, set aside or modify the orders and directions under review. During the pendency of such action or review, the orders and directions of the superintendent of insurance, as to reduction of rates, shall be suspended, but all such insurance companies shall, during the pendency of such action or review, deposit with the superintendent of insurance on all policies issued or renewed after the date of such order or direction, and until the final determination of such action, an amount equal to the difference between the rates fixed by the superintendent in his order and those in effect prior thereto, such funds to be held by the superintendent of insurance to await the result of such review, and in the event the orders and directions of the superintendent be set aside, such funds shall be returned to the companies pro rata, and in the event his orders and directions shall be sustained, then such funds shall be turned over to the policyholders pro rata. The superintendent shall deposit all such funds so held by him in responsible banks and shall require good and sufficient bond for safekeeping and proper accounting. Provided, that said banks shall pay, for the benefit of such funds, not less than the lowest rate paid for state funds during such time, such interest to be computed on daily balances. (R. S. 1919, Sec. 6284. Amended, Laws 1923, p. 234.)"

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